IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.8 OF 2006

Siddhant Estate Pvt.Ltd. ..Applicant.

V/s.

Ms.Sharnika Motwani. ..Respondent.

Ms.Kamath i/b M/s.Pandya & Co. for applicant.

Mr.C.R.Mestry for Respondent.

CORAM: A.M.KHANWILKAR,J

DATE : JANUARY 27, 2006.

P.C. :

1. Heard counsel for the parties.

2. Rule.

3. Rule made returnable forthwith by consent.

4. Mr.Mestry waives notice for respondent.

5. As short question is involved, petition is taken up for final disposal forthwith by consent.

6. The limited question that is required to addressed in this revision application is whether the court below was right in rejecting the applicant’s

application for refund of 2/3 court fees. The court below, by impugned order dated 22nd March, 2004 passed in L.E.& C Suit No.38/46/2003, declined that request on the reasoning that the order which was passed was not under Order XII Rule 6 of C.P.Code. Copy of the order passed in the suit dated 5th July, 2003 is produced on record. On fair reading of the said order, it is obvious that the same was passed in view of the consent terms arrived at between the parties. Such order is referable to Order XII Rule 6. In this view of the matter, the basis on which the court below proceeded to decide the application being erroneous, impugned order cannot be sustained. Even while setting aside the said order the applicant will not succeed to the extent as prayed in the application of refund of 2/3 court fees. Instead, this revision application is allowed by granting application of the applicant to the limited extent of refund of court fees "as per rules" and not 2/3 court fees as claimed.

7. Petition disposed of on the above terms. No order as to costs.